



July 28, 2021

The Honorable Xavier Becerra
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Re: Public comment regarding the Proposed Rule “Patient Protection and Affordable Care Act; Updating Payment Parameters and Improving Health Insurance Markets for 2022 and Beyond”
RIN: 0938-AU60

Dear Secretary Becerra:

Family Research Council (FRC) respectfully submits the following comments regarding the proposed rule issued by the U.S. Department of Health and Human Services (HHS) entitled, “Patient Protection and Affordable Care Act; Updating Payment Parameters and Improving Health Insurance Markets for 2022 and Beyond.”

This proposed rule would allow insurers to collect payments for elective abortions and legitimate health care in a single payment, a clear violation of congressional intent in section 1303 of the Affordable Care Act (ACA). Additionally, this rule would force taxpayers to unwillingly subsidize the abortion industry and create a lack of transparency resulting in policyholders unwittingly paying for abortion-covering insurance plans.

The proposed rule violates section 1303 of the Affordable Care Act

The proposed rule clearly violates the meaning and intent of section 1303 of the Affordable Care Act. Section 1303 states that insurance providers must “collect from each enrollee in the plan (without regard to the enrollee’s age, sex, or family status) a separate payment”¹ for elective abortions and legitimate medical procedures. The proposed rule would contradict section 1303 by reinstating Obama administration guidance that allowed combined payments to insurance providers.

The proposed rule would allow payment options that do not make abortion surcharges obvious to those enrolled in an exchange health care program.² These options include separate itemization of abortion surcharges through a single monthly invoice or a bill or a notice near the time of enrollment in a plan. These options are not consistent with the type of “separate payment” section 1303 requires—they simply organize the abortion surcharge differently. The proposed rule would allow the separate itemization of abortion surcharges in order to “satisfy” the separate payment requirements that they clearly do not satisfy.

The proposed rule diminishes the distinction between health care and abortion

By allowing insurance companies to collect a combined payment, the proposed rule does not distinguish between legitimate health care and elective abortions. This is another clear violation of section 1303, which requires plan issuers to “deposit all such separate payments [for elective abortion] into separate allocation [accounts].”³ Diminishing or eliminating distinctions between health care and elective abortion would be catastrophic, as it would open a door for elective abortion to be covered by Medicaid and subsidized by American taxpayers. Abortion does not equate to health care, and our laws should reflect that fact. The proposed rule would essentially allow elective abortion to be treated like

¹ ACA §1303(a)(2)(B)(i)

² 86 FR 35216

³ ACA §1303(a)(2)(B)(ii)

other procedures, with only a separate bill itemization to reflect any difference between an elective abortion and a legitimate medical procedure.

The proposed rule lacks transparency

The proposed rule allows health insurance providers to conceal abortion surcharges in a way that makes it more difficult to know whether a given plan pays for abortion. Under this rule, many Americans would be unknowingly paying for abortions. Although the abortion surcharge must be itemized separately on the monthly bill, providers are not required to notify their enrollees of the abortion surcharge.

The standing implementation of section 1303 of the ACA mandates that health care insurance providers send bills for the elective abortion coverage and the rest of the premium “either by sending separate paper bills which may be in the same envelope or mailing, or by sending separate bills electronically, which must be in separate emails or electronic communications.”⁴ This standing implementation prevents health insurance providers from concealing abortion coverage provided in each insurance plan. However, the proposed rule would deprive policyholders of this transparency.

The proposed rule violates Hyde Amendment principles

By allowing taxpayer funding for exchange plans that cover abortion-on-demand, the proposed rule would violate the long-standing, bipartisan principles of the Hyde Amendment. The ACA circumvented Hyde Amendment protections by creating a funding channel outside of the LHHS appropriations.

This channel allows for taxpayer funding for health plans that include abortion coverage, primarily through advanceable premium tax credits and cost-sharing reduction payments that reduce out-of-pocket costs. This is not in line with the American taxpayer’s interests and goes against established

⁴ 45 CFR 156.280(e)(2)(ii)(A)

policy in avoiding taxpayer funding for abortion except in certain circumstances. The proposed rule would contradict standing appropriations practices and is inconsistent with Congress' fiscal priorities.

Conclusion

The proposed rule would violate standing policy according to section 1303 of the Affordable Care Act that states that elective abortions must have separate insurance payments. Additionally, this rule is not transparent.

American taxpayers should not have to unknowingly fund abortion, a practice that many find morally objectionable. American sentiment and standing policies make it clear that taxpayer dollars have no place in funding the abortion industry. There must be a clear separation between legitimate health care and elective abortion.

Respectfully submitted,

/s/ Connor Semelsberger, MPP

Director of Federal Affairs for Life and Human Dignity

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